



(21)  
FEB 25 1943

CHARLES ELMORE DODDLEY  
CLERK

# United States Supreme Court

Nos. 677, 678, 679, 680.

October Term, 1942.

HARBORSIDE WAREHOUSE COMPANY, INC., a corporation,  
*Petitioner,*

*vs.*

THE CITY OF JERSEY CITY, a municipal corporation, and THE  
STATE BOARD OF TAX APPEALS, OF THE STATE OF NEW  
JERSEY.

On Application  
for Writ of  
Certiorari.

(1935 Tax)

HARBORSIDE WAREHOUSE COMPANY, INC., a corporation,  
*Petitioner,*

*vs.*

THE CITY OF JERSEY CITY, a municipal corporation, and THE  
STATE BOARD OF TAX APPEALS, OF THE STATE OF NEW  
JERSEY.

On Application  
for Writ of  
Certiorari.

(1936 Tax)

HARBORSIDE WAREHOUSE COMPANY, INC., a corporation,  
*Petitioner,*

*vs.*

THE CITY OF JERSEY CITY, a municipal corporation, and THE  
STATE BOARD OF TAX APPEALS, OF THE STATE OF NEW  
JERSEY.

On Application  
for Writ of  
Certiorari.

(1937 Tax)

HARBORSIDE WAREHOUSE COMPANY, INC., a corporation,  
*Petitioner,*

*vs.*

THE CITY OF JERSEY CITY, a municipal corporation, and THE  
STATE BOARD OF TAX APPEALS, OF THE STATE OF NEW  
JERSEY.

On Application  
for Writ of  
Certiorari.

(1938 Tax)

On Petition for Writ or Writs of Certiorari to  
the Court of Errors and Appeals of New Jersey

## REPLY BRIEF OF PETITIONER

JOHN A. HARTPENCE,  
*Counsel for Petitioner,*  
15 Exchange Place,  
Jersey City, N. J.



# United States Supreme Court

Nos. 677, 678, 679, 680.

October Term, 1942.

HARBORSIDE WAREHOUSE COMPANY, INC., a corporation,  
*Petitioner,*

*vs.*

THE CITY OF JERSEY CITY, a municipal corporation, and THE  
STATE BOARD OF TAX APPEALS, OF THE STATE OF NEW  
JERSEY.

On Application  
for Writ of  
Certiorari.

(1935 Tax)

HARBORSIDE WAREHOUSE COMPANY, INC., a corporation,  
*Petitioner,*

*vs.*

THE CITY OF JERSEY CITY, a municipal corporation, and THE  
STATE BOARD OF TAX APPEALS, OF THE STATE OF NEW  
JERSEY.

On Application  
for Writ of  
Certiorari.

(1936 Tax)

HARBORSIDE WAREHOUSE COMPANY, INC., a corporation,  
*Petitioner,*

*vs.*

THE CITY OF JERSEY CITY, a municipal corporation, and THE  
STATE BOARD OF TAX APPEALS, OF THE STATE OF NEW  
JERSEY.

On Application  
for Writ of  
Certiorari.

(1937 Tax)

HARBORSIDE WAREHOUSE COMPANY, INC., a corporation,  
*Petitioner,*

*vs.*

THE CITY OF JERSEY CITY, a municipal corporation, and THE  
STATE BOARD OF TAX APPEALS, OF THE STATE OF NEW  
JERSEY.

On Application  
for Writ of  
Certiorari.

(1938 Tax)

On Petition for Writ or Writs of Certiorari to  
the Court of Errors and Appeals of New Jersey

## REPLY BRIEF OF PETITIONER

The specific point of Petitioner's present application to this Court for certiorari is, that Petitioner was denied due process of law (and concomitantly the equal protection of the laws), by the action of the State Board of Tax Appeals of New Jersey (sustained and approved by the judgments of the Supreme Court and the Court of Errors and Ap-

peals), in disregarding the only legal evidence produced before it, in ignoring and failing to apply the established law pertaining to the issues involved, and in basing its judgments upon a mere personal visit to and inspection of the taxpayer's property and fixing an independent and arbitrary valuation of it as the basis of a tax imposition, without notice of such action to Petitioner or granting it a hearing respecting it, thereby essaying to exercise an assessing power or function which it did not possess, and, in the exercise of that non-existent power or function, failing to give the taxpayer notice of such action or to afford it an opportunity to be heard regarding it prior to judgment.

This is all so clearly pointed out in our Petition and Supporting Brief and at such length and with such particularity that repetition thereof here would not be justified. But that particularity in the Petition was deemed essential to a clear presentation of the issue and of the Federal question involved, and to show that there is much in the record to substantiate the proposition that Petitioner was subjected to arbitrary "discriminatory taxation", which Respondent seeks to disavow at page 2 of its Brief.

Respondent passes over the real point in issue, and fails to meet or refute the situation asserted by Petitioner as a denial of its fundamental rights under the law of the land, just as the State Board ignored them and as the Supreme Court and the Court of Errors and Appeals, it is respectfully submitted, also failed to effectively consider them.

Respondent, at page 2, also argues that Petitioner does not show that it is harmed by the action complained of.

In other words, *after* a judicial tribunal has prejudged the case, without affording the parties a hearing, the parties are not at liberty to object to such an astonishing procedure unless it be shown that injury resulted therefrom.

But this is quite in keeping with Respondent's position, and with the circumlocution of fact, law and procedure to

which Petitioner claims it has been subjected, throughout, as demonstrated by the Tax History, the Testimony, the Statutes, and the Judicial Authorities reviewed and outlined in our Petition and Brief, and it entirely ignores the judicial expressions of this Court and of the New Jersey Courts cited and quoted therein. It is not the *magnitude* nor the *extent* of the denial of a constitutional right that condemns it, but the *fact* of such denial. This is clearly pointed out in the opinions of this Court and the authorities cited and quoted at pages 49-56 of our main Brief, as well as in the opinions of the New Jersey Courts cited and quoted at pages 40-48 of the Brief, and here submitted in the appendices.

Respondent, at page 2, also stresses the proposition that "whether or not a state tribunal may view property which is the subject matter of controversy as to value, is wholly a matter of state law, and that a determination by the state courts of that question, one way or the other, does not involve any infringement of the Fourteenth Amendment". This, it will be recalled, was also referred to in the Supreme Court's opinion (Record, p. 606).

Nevertheless, it may not be inappropriate to note that the Court of Errors and Appeals reversed a judgment based upon such a view in *Garland v. The Furst Store*, 93 N. J. Law, 127. The appropriate portions of the Court's opinion are quoted, for the convenience of the Court, in the Appendix B of this Reply Brief.

The opinion of the Supreme Court, in *Rich v. Inter-City Transportation Company*, 11 N. J. Misc. Rep. 243, 165 Atl. Rep. 296 (not otherwise officially reported) is also quoted in full in Appendix C.

And, in Appendix A, is printed in full the opinion of the Supreme Court in the case of *Duke Power Company v. State Board of Tax Appeals et al.*, decided February 10, 1943, (not yet reported), after the filing of our Petition herein on

January 29, 1943, which, in reversing the judgment of the State Board (20 N. J. Misc. Rep. 240, cited at page 2 of our Petition) expresses with emphasis its disapproval of the action of the County Board, as a Special Tax Tribunal, in proceeding without a hearing, points out that "the procedure before the State Board was no substitute for a proper proceeding before the County Board," and sustains the very proposition which Petitioner contends for, and which it was denied, in the instant case.

It so completely argues and sustains Petitioner's present contention that it is deemed appropriate to submit it to this Court as illustrative of the application in that case of the exact principle denied Petitioner. What could more adequately and completely demonstrate that Petitioner might well be justified in feeling that it "was thus selected for discriminatory treatment," deprecated at page 5 of Respondent's Brief?

The cases speak for themselves, and show to what extent the principles there enunciated were departed from in the instant case.

It should also be noted that Appendix A and Appendix B to Respondent's Brief, and discussed therein (pp. 31, 40-50), constitute excerpts from a document which is no part of the Record (Record, p. 130).

The Federal Question was made in the Courts below and there ruled adversely to Petitioner (Record, pp. 74, 77-81; 608, 611-615).

It is respectfully submitted that the prayer of the Petition should be granted.

JOHN A. HARTPENCE,  
Counsel for Petitioner,  
15 Exchange Place,  
Jersey City, N. J.

